

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY**

CENTER FOR BIOLOGICAL DIVERSITY,
et al.,

Plaintiffs,

v.

UNITED STATES FOREST SERVICE, *et al.*

Defendants,

v.

SOUTH FORK COAL COMPANY, LLC,

Defendant-Intervenor.

Civil Action No. 5:24-cv-00274 (Judge Volk)

DECLARATION OF TIERRA CURRY

I, Tierra Curry, state and declare as follows:

1. The following facts are personally known to me and if called as a witness I could and would truthfully testify to these facts.

2. I am a resident of Somerset, Kentucky and I work for the Center for Biological Diversity. I have a Bachelor of Arts degree in English from Berea College in Berea, Kentucky, and a Master of Science degree in Biology from Portland State University. My graduate research focused on the management of freshwater habitats in relation to the reproductive success of imperiled aquatic species. Before joining the Center in 2007, I worked as an environmental educator and field biologist focused on the restoration and management of freshwater ecosystems in Oregon and Washington.

3. The Center is a tax-exempt, non-profit, membership-based organization founded in 1989 with offices in Virginia, North Carolina, Washington, D.C. and across the country. The Center is actively involved in North American wildlife and habitat protection issues, and has more than 87,000 members. The Center's members include over 2,300 Kentucky, West Virginia, and Virginia residents.

4. I have been a member of and biologist for the Center for Biological Diversity for more than 17 years in total. I am a senior scientist and I lead our extinction crisis work to raise awareness of wildlife declines and to stave off the loss of more wild plants and animals to extinction.

5. I spent countless childhood hours playing in and near creeks in eastern Kentucky and I developed a deep love for being outside looking for wildlife. These experiences were formative for me, and I clearly remember the moment when I first encountered a species of darter. I was wading in the creek when I noticed an unusual little fish that was so vibrant it stopped me in my tracks. The awe from these childhood explorations never faded and as an adult I still spend as much time as I can out exploring creeks and rivers.

6. My appreciation for wildlife led me to my career working to gain protections for species at risk of extinction. Animals that live in creeks and rivers are at the forefront of the extinction crisis, so much of my work is focused on advocating for imperiled freshwater species that are at risk of being lost. Because the Appalachian region is globally important in terms of freshwater diversity, I spend a lot of time focusing on the fish, crayfish, salamanders, and freshwater mussels that live in the Appalachian Mountains and nowhere else on Earth. These animals are interesting in their own right and are also part of what makes this region that I call home so special.

7. In 2007 I started researching freshwater animals that were in harm's way in the southeastern United States, and it was at this time I first learned of the candy darter. This led to me authoring a petition to the U.S. Fish and Wildlife Service in 2010 to protect the candy darter under the Endangered Species Act due primarily to threats to its habitat from activities that cause silt and sediment to enter waterways.

8. I have been engaged in efforts to save this colorful little fish from extinction for the past 14 years. I care deeply about the survival of the candy darter because it is part of the special natural heritage of Appalachia, and because it plays a role in the web of life in the rivers where it lives. It is also a very beautiful fish, as seen in this picture taken by scientist Todd Crail.



9. The formal petition to protect the candy darter led to funding for researchers to investigate its conservation status and habitat needs. In 2017 the Roanoke Times published an opinion editorial I wrote about the research being conducted on the candy darter titled “Wildlife lovers savor candy darter study story.” The guest editorial was one feature of my efforts to raise public awareness of the plight of the darter and to advocate for its protection.

10. The U.S. Fish and Wildlife Service listed the candy darter as endangered in 2018. When they were protected in 2018, I issued a press release with the statement, “Nothing’s sweeter than imperiled animals finally getting help to avoid extinction, so we celebrate the candy darter receiving the Endangered Species Act’s lifesaving protections. These colorful fish have disappeared from so many streams, but there’s still time to save them.”

11. In 2018 and 2019 I worked on mitigating proposed logging projects that would have caused silt and sediment to degrade the candy darter’s habitat. In 2020 I wrote comments to the U.S. Fish and Wildlife Service raising concerns about additional logging projects slated for candy darter habitat that would have taken place on steep slopes and degraded the water quality the fish needs to survive and reproduce.

12. In 2018 I started working on efforts to protect the candy darter from impacts from the construction of the Mountain Valley Pipeline, an effort I remained engaged in for the last six years. In 2022 the West Virginia Gazette-Mail published an opinion editorial I wrote about impacts to the candy darter from the pipeline.

13. In 2021 when the Service issued a final rule protecting the candy darter’s critical habitat, I issued a press release with the statement, “Protecting critical habitat for the candy darter will help this little fish stave off extinction and will save a beautiful piece of Appalachia’s rich natural heritage for future generations.” Even though it now has a spot on the endangered species list, ongoing threats have kept the candy darter on the brink of extinction. Of 35 known

candy darter populations, 17 have already been extirpated and many of the remaining populations are small and at risk.

14. The most abundant candy darter populations occur in the Upper Gauley and Upper Greenbrier River watersheds. The Upper Gauley watershed is the most important area for the candy darter's future for several reasons. This beautiful area has high amounts of forest cover and low levels of silt in the waterways. It also is the stronghold for genetically pure candy darters that haven't hybridized with introduced variegate darters, which pose an existential threat to the candy darter's future. The U.S. Fish and Wildlife Service has identified the Upper Gauley watershed populations as "essential to the recovery of the species."

15. The Upper Gauley River basin includes the Cherry River, Cranberry River, Williams River, and Laurel Creek, all of which are home to candy darters. This is one of the most beautiful areas I have ever explored. I enjoy driving along roads that run near rivers and pulling over wherever there is parking to walk along or in the river to observe wildlife. During the summers of 2021 and 2022 I swam or waded in the Cranberry, Williams, and Laurel Creek, and the North Fork Cherry and South Fork Cherry, and mainstem Cherry River, enjoying the scenery and looking for candy darters and hellbender salamanders in particular. I have explored the North Fork Cherry River, driven into Richwood where the South and North Forks converge, and driven along the South Fork as far as I could access.

16. In 2021 and 2022 I also recreated and looked for candy darters in the East Fork Greenbrier, West Fork Greenbrier, mainstem Greenbrier, and Little River. I was excited to find an educational sign about candy darters at a trailhead on the Greenbrier River.



17. Candy darters spawn in the spring, and that's when the males display their brightest colors. I plan to return to the Cranberry, North Fork Cherry, South Fork Cherry, and mainstem Cherry rivers in May of 2025 specifically to look for candy darters when they are at their flashiest. I plan to drive along the North Fork Cherry Road (Route 39) and along Johnstown Road which largely parallels the South Fork Cherry, and to explore the parts of Forest Service Roads 223 and 249 that I can safely access.

18. In 2021 the U.S. Forest Service issued a permit authorizing a private coal company to haul coal and heavy loads of equipment on Forest Service roads in candy darter habitat in the Cherry River watershed. Mining and hauling coal and supplies on these roads has and will continue to cause runoff that will enter the North Fork and South Fork Cherry rivers. I

grew up along a road with coal trucks and have experienced firsthand the dust that comes off the road and off the trucks and I've seen the damage that heavy loads cause to roads. I've seen this dust coat surrounding vegetation and then get washed into waterways when it rains. It distresses me greatly that these activities are being allowed on National Forest lands and in candy darter habitat specifically. Coal also falls off coal trucks and becomes an ongoing source of water pollution. Coal mining and coal hauling have both been documented to harm fish and their habitat through physical and chemical changes to water quality and streambed structure.

19. In evaluating effects of coal mining pollution on downstream wildlife, the U.S. Fish and Wildlife Service has reported sediment pollution traveling more than 10 miles downstream. Runoff from the Rocky Run mine and from the haul roads is going to enter the tributaries of the Cherry and end up in the rivers themselves. These effects are likely to be magnified by the record heavy rainfall events that West Virginia has experienced in recent years.

20. The Forest Service issued this permit for the Rocky Run mine without consulting with the U.S. Fish and Wildlife Service to evaluate how use of these roads for these purposes will affect candy darters and their critical habitat. Because there was no consultation, there are no measures in place to protect the candy darter from these activities.

21. This failure to follow the requirements of the Endangered Species Act is particularly upsetting because this area is so critically important for the survival of the candy darter. There are only eight populations of candy darter that are considered to be in good condition and these include the populations in the Cherry and the South Fork Cherry rivers.

22. Candy darters eat insects on the river bottom. The insects they eat need the spaces between the rocks on the river bottom to carry out their life cycles. Candy darters also need the spaces between the rocks to nest and to hide from predators. Runoff from mining and haul roads

causes silt and sediment to enter waterways. This pollution settles on the river bottom and fills in the spaces between the rocks that the candy darters must have to survive.

23. Because the candy darter is so imperiled in the rest of its range, its long-term survival depends on the survival of the Upper Gauley populations. The Forest Service should not be allowing activities to take place that are harming this fish's habitat and pushing it even further towards the cliff of extinction. It's a shame that the last best habitat for the candy darter is being degraded. I am distressed that the Cherry River is being harmed, and that my opportunities to observe candy darters are diminishing by the day. I am also harmed because after fourteen years of work advocating for this beautiful little fish, it finally has protected habitat, but federal agencies aren't taking the actions required to provide on the ground protection.

24. To remedy this situation, the Forest Service needs to withdraw the permit to use the roads in the candy darter's habitat and consult with the Fish and Wildlife Service to make sure the candy darter is not being jeopardized and its critical habitat is not being adversely modified. The Forest Service also needs to engage in the required analysis pursuant to the National Environmental Policy Act. A court order vacating the permit and requiring the Forest Service to conduct the required environmental analyses would redress my injuries and would help protect the Cherry River so that candy darters can swim there for generations to come. I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 20th day of November, 2024 in Somerset, Kentucky.



Tierra Curry